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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re MARCUS E., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCUS E.,

Defendant and Appellant.

D037511

(Super. Ct. No. J191762)

APPEAL from a judgment of the Superior Court of San Diego County, Lawrence Kapiloff, Judge (retired judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution). Affirmed.

Marcus E. appeals a juvenile court judgment on a true finding of robbery (Pen. Code, § 211). The court found Marcus came within the provisions of Welfare and Institutions Code section 602, returned him to his parents' custody and placed him on

probation. Marcus contends the court reversibly erred by admitting evidence of irrelevant criminal acts to which he had no connection to prove his guilt. We affirm.

### FACTUAL BACKGROUND

On August 28, 2000, at 1:25 a.m., two men walked into an AM/PM store. One was wearing gloves and a scarf over his face and was carrying a taser gun. The other had on a gray sweatshirt and had his face covered. He held a rifle. The men told the clerk to open the cash registers, took about \$170, ordered him to lie on the floor, then fled. The clerk called 911. The robbery was videotaped on the store's recording system.

Police on patrol in the area heard the radio dispatch report of the robbery, noticed a truck nearby and stopped it. Inside were Marcus, his brother, William E., and Gregory B.<sup>1</sup> Also in the truck were gloves, a gray sweatshirt with two holes cut in the back of the hood, a scarf, a green pillowcase, a rifle and a taser gun. Police brought the AM/PM clerk to where the truck was stopped. He identified Gregory by his height and the shoes he was wearing. He identified Marcus by his shoes and pants. He could not identify William.

Marcus waived his constitutional rights under *Miranda v. Arizona* (1966) 384 U.S. 436 and spoke with police. He said he had been asleep at home when his brother awakened him and said they were going to a friend's house for BB gun wars. Marcus said he did not want to go because he had to register for school the next morning, but his

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<sup>1</sup> William and Gregory were charged as adults. (Welf. & Inst. Code, § 707.) In the interest of protecting Marcus's identity, we refer to all three by their first names.

bother insisted, so he climbed out the window and got into Gregory's truck. He said he did not learn of the robbery plans until they were on their way. He asked them to take him home, but they refused. He was given a walkie-talkie and told to call if anyone came to the store.

The detective showed Marcus still photographs from a videotape from a robbery at a different AM/PM store the week before. Marcus identified his brother and Gregory as the robbers, but said he did not participate in that robbery.

*Defense Evidence:*

Marcus testified on the night of the August 28 robbery, his brother awakened him to participate in BB gun and paint ball wars. He testified he said he did not want to go because he had to register for school the next morning, but then climbed out the window and got into Gregory's truck. He testified he did not learn of the robbery plans until they were on their way and he asked to be let out of the truck, but Gregory kept driving. He said he did not get out of the truck during the robbery and did not use the walkie-talkie. He admitted identifying his brother and Gregory as the people who robbed the AM/PM store the week before, but said he was not a part of that robbery.

## DISCUSSION

Marcus contends the court reversibly erred in admitting evidence of the August 21 robbery because it was irrelevant to whether he committed the robbery on August 28 and the probative value of the evidence is outweighed by its prejudicial effect.

Even if we were to conclude that admission of the evidence was error, it is not reasonably probable the result would have been different absent the evidence. Thus,

there is no prejudice. The court found Marcus's explanation that he had left the house to participate in paintball wars "totally unbelievable" and "absurd." Also, Marcus admitted he had acted as a lookout during the robbery. "All persons concerned in the commission of a crime . . . whether they directly commit the act constituting the offense, or aid or abet in its commission . . . are principals in any crime so committed." (Pen. Code, § 31.) A person is an aider and abettor when he "[w]ith knowledge of the unlawful purpose of the perpetrator" and "[w]ith the intent or purpose of committing, encouraging, or facilitating the commission of the crime . . . [b]y act or advice aids, promotes, encourages or instigates the commission of the crime." (CALJIC No. 3.01.) "[O]ne who was present . . . to serve as a lookout, or to give warning of approach of anyone seeking to interfere . . . is a principal in the crime committed." [Citation.] (*People v. Ketchum* (1960) 185 Cal.App.2d 615, 619.) Marcus told the detective he was to act as the lookout. He said that as they were driving toward the AM/PM store, he saw police cars and told William and Gregory, "We can't do the robbery because the police are right here and we will get caught." He admitted he was given a walkie-talkie and was to call if anyone came to the store. By being the lookout, he facilitated the commission of the robbery. It is not reasonably probable he would have received a more beneficial result had evidence of his statements about the August 21 robbery not been admitted.

DISPOSITION

The judgment is affirmed.

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HALLER, J.

WE CONCUR:

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BENKE, Acting P. J.

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McDONALD, J.